

IN THE FLORIDA SUPREME COURT  
CASE NO.: SC04-925

FILED  
2004 JUN -4 P 12:49  
FLORIDA SUPREME COURT  
TALLAHASSEE, FLORIDA

JEB BUSH, Governor of the  
State of Florida,

Appellant,

On certification from the Second  
District Court of Appeal  
Case No. 2D04-2045

vs.

MICHAEL SCHIAVO, as Guardian  
of the person of THERESA  
MARIE SCHIAVO,

Appellee.

SC04-925

---

**OPPOSITION TO APPELLANT'S MOTION TO FILE  
JURISDICTIONAL BRIEF**

COMES NOW the Appellee, MICHAEL SCHIAVO, as Guardian of the  
person of THERESA MARIE SCHIAVO, and states:

1. There is no good cause to further delay this case for the filing of  
additional briefs on jurisdictional issues.
2. As Appellant concedes, Motion at 3, this Court's Rules do not  
provide for separate jurisdictional briefing, nor is there any reason to delay this  
case pending such briefing in this case. The district court itself recognized the  
importance of this case and the need for expeditious, final adjudication by issuing  
an order directing the parties "to show cause why this order [Summary Final

Judgment] should not be certified to the supreme court as a matter of great public importance requiring immediate resolution by that court” (order attached hereto).

2. Appellant had a full opportunity to raise any issues that it wanted in response to that order and filed a twenty-one-page response (excluding appendix)<sup>1</sup> to the show cause order, which the district court has attached to the supreme court’s copy of its order of certification. To the extent that appellant has any arguments to make about certification, it has had the chance to make them and those arguments are already available to the Court.

3. If any party’s position has not been fully articulated, it is that of appellee. Since the district court ordered the parties to show cause why the summary final judgment should not be certified, appellee filed a truncated response informing the district court that it was in favor of certification. That response is also before the Court, as is the circuit court’s lengthy opinion and final judgment. Appellee believes the Court needs no additional information to determine that certification is appropriate and that this Court should exercise its jurisdiction.

5. The Governor contends in his motion that “this appeal is not ripe for review by this Court due to unresolved factual issues in the underlying litigation.”

---

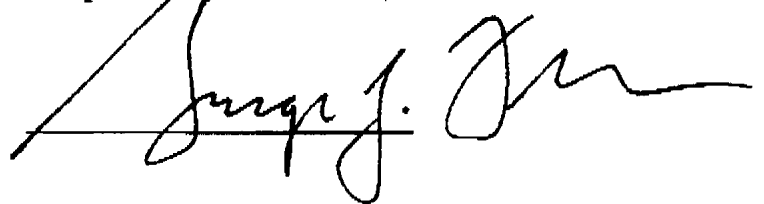
<sup>1</sup>Because appellant was responding to an order to show cause, appellant was not limited to the five-page response provided for in Rule of Appellate Procedure 9.125(d).

The Governor's contention is erroneous because the trial court found the subject statute unconstitutional on its face. A facial challenge to the constitutionality of a statute involves a pure question of law. *See e.g., Harvey v. State*, 848 So. 2d 1060, 1066 (Fla. 2003). Accordingly, such a challenge necessarily does not involve fact-finding. *State Comm'n on Ethics v. Sullivan*, 430 So. 2d 928, 942 (Fla. 1st DCA 1983).<sup>2</sup>

6. Appellant's Motion is the latest in a long series of efforts to delay proceedings in this case in order to avoid a final decision invalidating the statute at issue. Given the serious constitutional rights at stake which are being violated every day that the statute is in place, and given the continuing public harm caused by the statute, appellee requests that the Court exercise its jurisdiction without further delay.

WHEREFORE, Appellee respectfully requests this court to deny the Appellant's motion.

Respectfully submitted,



---

<sup>2</sup>While the trial court also found the subject statute unconstitutional as applied to Theresa Schiavo, it held that the material facts pertinent to the subject "as applied" challenge were stipulated to by the parties.

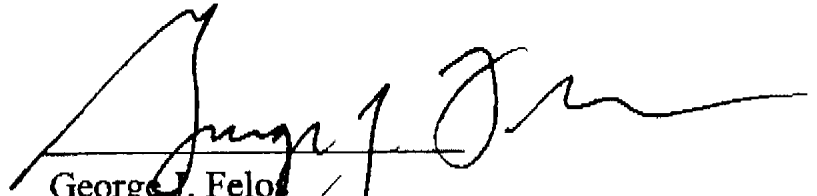
George J. Felos  
(Fla. Bar No. 226653)  
Felos & Felos, P.A.  
595 Main Street  
Dunedin, FL 34698  
(727) 736-1402

Randall C. Marshall, Legal Director  
(Fla. Bar No. 0181765)  
American Civil Liberties Union of  
Florida  
4500 Biscayne Boulevard -- Suite 340  
Miami, FL 33137  
(305) 576-2337

Thomas J. Perrelli (*pro hac*  
*vice pending*)  
Robert M. Portman (*pro hac vice*  
*pending*)  
Jenner & Block LLC  
601 13th Street, NW, Suite 1200  
Washington, DC 20005  
(202) 639-6000  
Cooperating Counsel with ACLU  
Attorneys for Appellee

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished this 4th day of June, 2004 by Fax and U.S. mail to Kenneth L. Conner, One North Dale Mabry, Suite 650, Tampa, FL 33606, Counsel for the Governor, and to Jason Vail, Deputy Attorney General of the State of Florida, Office of the Attorney General – PI 01, 400 S. Monroe Street, Tallahassee, Florida 32399-6536.

A handwritten signature in black ink, appearing to read "George J. Felos", written over a horizontal line.

George J. Felos  
(Fla. Bar No. 226653)  
Felos & Felos, P.A.  
595 Main Street  
Dunedin, FL 34698  
(727) 736-1402

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

May 12, 2004

**CASE NO.: 2D04-2045**

L.T. No. : 03-008212-CI

Jeb Bush, Governor Of  
Florida, Et Al

v. Michael Schiavo  
Guardian: Theresa Schiavo

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

**Order Relinquishing Case for Entry of Final Judgment and Order  
to Show Cause Why this Proceeding Should Not be Certified to  
the Supreme Court As Requiring Immediate Resolution.**

This Court has received a notice of appeal from Jeb Bush, Governor of the State of Florida, appealing an order entitled "Order Granting Petitioner's Motion for Summary Judgment." The appealed order does not contain sufficient words of finality. See Better Government Ass'n of Sarasota County v. State, 802 So. 2d 414 (Fla. 2d DCA 2001); Gries Inv. Co. v. Chelton, 388 So. 2d 1281 (Fla. 3d DCA 1980); Lawler v. Harris, 418 So. 2d 1239 (Fla. 5th DCA 1982). Pursuant to Florida Rule of Appellate Procedure 9.110(l), this court relinquishes jurisdiction to the trial court for a period of ten days in which to enter a new order containing sufficient words of finality. To avoid confusion, it is sufficient if the new order is identical to the current order so long as it is entitled "Summary Final Judgment" and the first "Ordered and Adjudged" clause at the conclusion of the order states both that the motion for summary judgment is granted and that summary final judgment is entered in favor of the Petitioner.

Pursuant to Florida Rule of Appellate Procedure 9.125 this court also orders the parties within ten days to show cause why this order should not be certified to the supreme court as a matter of great public importance requiring immediate resolution by that court.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Kenneth L. Connor, Esq.  
George J. Felos, Esq.  
Jay Vail, A.A.G.  
Karleen Deblaker, Clerk

Randall C. Marshall, Esq.  
Thomas J. Perrelli, Esq.  
Hon. W. Douglas Baird

Nicole G. Berner, Esq.  
Robert M. Portman, Esq.  
David Cortman

es

  
James Birkhold  
Clerk

